

SPECIAL BOARD OF ADJUSTMENT NO. 605

AWARD NO. 431  
CASE NO. CL-119-W

PARTIES TO DISPUTE:

MISSOURI PACIFIC RAILROAD COMPANY

- and -

BROTHERHOOD OF RAILWAY, AIRLINE  
AND STEAMSHIP CLERKS, FREIGHT  
HANDLERS, EXPRESS AND STATION  
EMPLOYES

QUESTIONS AT ISSUE:

"1. Did Carrier violate the provisions of the February 7, 1965 National Agreement, as amended, when it abolished four (4) regularly assigned positions at its Miller Street Freight Warehouse, St. Louis, Missouri end of tour of duty July 18, 1980; and then, removed thirty (30) employees from the protective pay list and status and ceased paying protective pay benefits to those thirty (30) employees effective July 19, 1980? (Carrier's File 205-5570)

2. Shall Carrier now be required to restore those thirty (30) employees (named below) to the protective pay list and status and compensate them for all protective pay benefits due beginning July 19, 1980 and continuing until returned to such list and status.

R. L. Manley	T. R. Kelley	E. Clayton
J. W. Spies	R. Lesley	E. L. Anderson
E. Kirtright	E. R. Brown	O. L. Perry
W. J. Poe	A. Shipp	A. Harvey
C. Smith	J. E. Moore	E. Lawson
J. E. Jenkins	M. Milton	J. E. Harvey
C. Tyler	I. Clark	H. L. Croom
C. Walker, Jr.	A. A. Burns	R. Howard
T. L. Erwin	J. A. Ward	H. P. Grizone, III
O. Coney	J. C. Wallace	W. J. Birtley

OPINION OF BOARD:

All of the Claimants are "protected employees" within the meaning of that phrase in the February 7, 1965 National Agreement, as amended by Memorandum Agreement of November 7, 1978 between MOPAC and BRAC. Each Claimant held seniority and working rights on Carrier's St. Louis Terminal Division Seniority Roster, District No. 24. As of the time the present dispute arose in July-August 1980, notwithstanding consolidations and relocations, Seniority District No. 24 comprised several facilities or locations in the St. Louis, Missouri area: Vanderwerter State Office Building, 23rd Street Yard Office, Grand Avenue Tower, Lesperance Street Yard Office, Carroll Street Office, Ivory Street Yard Office, Sarpy Street Office and Warehouse, Mitchell (Illinois) Yard Office and Miller Street Warehouse. The first four (4) named Claimants were, as of July 1980, regularly assigned to work at Miller Street Warehouse: R. L. Manley as Control Foreman (Job #248); J. W. Spies as General Warehouse foreman (Job #245); E. Kirtright as Checker-Storeman (Job #227); and W. J. Pot as Stowman (Job #265). Some of the other twenty-six (26) Claimants were, as of July 1980, working at various locations in Seniority District No. 24, primarily in Porter, Messenger-Clerk or Stowman jobs. The rest were in furlough status and working sporadically by call under Rule 14 and/or drawing protective pay benefits. The record indicates that some of these latter individuals presented themselves daily to the Miller Street Warehouse for a morning "shape-up", in which workers were selected, as needed, and the balance sent home.

The Miller Street Warehouse was used primarily as a freight forwarding facility where Carrier employees performed a break-bulk function for various freight forwarding companies under a tariff agreement. It is not disputed

that this business declined gradually but continually during the 1970s, with a corresponding drop in volume of freight and work opportunities at the Miller Street facility. In early July 1980, the last freight forwarder still using the facility advised Carrier that it was vacating the property effective July 18. Carrier decided to close the facility completely and, pursuant to Rule 14 of the Schedule Agreement, issued bulletins dated July 9, 1980 advising Claimants Manley, Spies, Kirtright and Poe that their respective regular positions at Miller Street Warehouse would be abolished effective July 18, 1980. Manley did not exercise any displacement rights but took sick leave and then retired August 31, 1980. Spies, Kirtright and Poe each exercised seniority rights and displaced junior employees on jobs at other facilities in Seniority District No. 24.

The gravamen of the instant claim arose on July 18, 1980 when Carrier's Director of Labor Relations directed the Manager Disbursements Accounting, as follows:

St. Louis - August 18,, 1980

F 205-4409  
RC-1024

Mr. L. J. Collett: ✓

Reference job stabilization Agreement of February 7, 1965 as amended by Agreement effective January 1, 1979.

Following employees should be eliminated from protected list, roster code 1024, as of July 19, 1980, as result of 100% decrease in business at Miller Street, St. Louis:

R. L. Manley	702-14-6693	M. Milton	430-03-2702
J. W. Spies	720-12-6335	T. Clark	488-20-4793
E. Kirtright	500-16-0027	A. A. Burns	431-28-5111
W. J. Poe	428-76-7319	J. A. Ward	429-36-2749
C. Smith	498-20-3743	J. C. Wallace	428-32-2281
J. E. Jenkins	495-78-6554	E. Clayton	428-46-1647
C. Tyler	426-40-1622	E. L. Anderson	487-30-2778
C. Walker, Jr.	432-40-1764	O. L. Perry	428-50-4444
T. L. Erwin	426-42-1732	A. Harvey	499-26-9113
O. Coney	494-28-4258	E. Lawson	488-20-9168
T. R. Kelly	431-26-7551	J. E. Harvey	426-48-2245
R. Lesley	431-18-6201	H. L. Croom	500-30-0002
E. R. Brown	498-12-8479	R. Howard	336-18-2519
A. Shipp	500-18-9669	H. P. Grigone III	490-62-7718
J. E. Moore	497-20-4537	W. J. Birthley	492-58-9782

Protection for the month of July 1980 should be based on 14/23 of protected rate.

*W. B. Sayre*

cc: Mr. R. K. Davidson  
Mr. C. E. Dettmann  
Mr. W. Crimm

In September 1980 Claimants and BRAC became aware of the removal of these thirty (30) individuals from the protected list effective July 19, 1980, when those who applied for July 1980 protective pay benefits had their claims denied. BRAC filed its protest that Carrier's action constituted a violation of the February 7, 1965 National Agreement, as amended, and sought restoration of the names to the list, as well as payment of protective benefit claims declined in the interim. The dispute between the parties quickly crystallized on the property, as reflected in the following comprehensive correspondence between the Director of Labor Relations and the General Chairman:

Mr. T. W. Taggart, Jr.  
 General Chairman - BRAC  
 8039 Watson Road - Suite 120  
 St. Louis, Missouri 63119

Dear Sir:

Please refer to your letter of March 2, 1981, file H-1383, in which you appeal claim of the following 30 employees at St. Louis Missouri, that their names be restored to the protected list and that they be compensated protective benefits due them under the February 7, 1965, as amended:

R. L. Manley	T. R. Kelley	E. Clayton
J. W. Spies	R. Lesley	E. L. Anderson
E. Kirtright	E. R. Brown	O. L. Perry
W. J. Poe	A. Shipp	A. Harvey
C. Smith	J. E. Moore	E. Lawson
J. E. Jenkins	M. Milton	J. E. Harvey
C. Tyler	I. Clark	H. L. Croom
C. Walker, Jr.	A. A. Burns	R. Howard
T. L. Erwin	J. A. Ward	H. P. Grizone III
O. Coney	J. C. Wallace	W. J. Birtley

The facts surrounding this dispute are that all positions at our Miller Street Freight House facility in St. Louis, Missouri, were abolished effective close of work Friday, July 18, 1980. This was brought about by the fact that the so-called freight forwarder business had ceased to exist and there was in fact no work to be performed.

As we explained to you in our letter of December 17, 1980, the Miller Street Freight House facility at St. Louis, Missouri, was used in its entirety by the freight forwarder companies for the handling of carload LCL as well as some smaller quantities of LCL. The forwarding companies were patrons who brought their business to the Miller Street facility where Missouri Pacific performed break bulk functions for the various forwarding companies under a tariff arrangement. During recent years there has been a continuing decline in the volume of freight forwarder business, and by July 1980, there simply was no business to be handled at the Miller Street facility.

Effective with the disappearance of all business at the Miller Street facility, which resulted in no work to be performed, Carrier reduced its protected list accordingly under Agreement of February 7, 1965.

Awards of Special Board of Adjustment No. 605 have consistently held that the Agreement of February 7, 1965, was not intended to provide protective benefits to employees when the work disappeared or no longer existed. Please see Awards Nos. 352, 373, 408, 409 and 415 of Board No. 605. In Award No. 352, BRAC vs. Western Warehousing Company, the Board stated:

" . . . we are prepared to accept the interpretation which was presented in an analogous dispute by the Organization in the U. S. District Court for the Northern District of Oklahoma, supra."

For your information, this has reference to Civil Action No. 69-C-203 in the U. S. District Court for the Northern District of Oklahoma, involving benefits for employees represented by BRAC who were affected by the close of the Tulsa Union Depot Company because of the discontinuance of all passenger service. In that case, BRAC's position was that the Agreement of February 7, 1965, was not applicable. The awards of Special Board No. 605, cited above, adopted the same position expressed by BRAC in the Tulsa Union Depot Company case.

In view of the facts set forth herein, Carrier was entitled to reduce its protective obligation accordingly. We find your claim is without merit and it is hereby respectfully declined.

Without waiving the position set forth above, we note you have stated some of the employees named in your claim were not working at the Miller Street facility. Our records indicate they were employed at the Miller Street facility; and attached is copy of a statement showing the status of each claimant as it relates to this claim.

Yours truly,



\* \* \*

July 10, 1981

File: H-1383

Mr. O. B. Sayers, Director of Labor Relations  
Missouri Pacific Railroad Company  
210 N. 13th Street  
St. Louis, Missouri 63103

Dear Sir:

This has reference to your letter of April 17, 1981, file 205-5570, and the two (2) page attachment thereto, which declined claim of the thirty (30) employees listed below, that their names be restored to the protected list and that they be compensated protective benefits due them pursuant to the February 7, 1965 National Agreement, as amended.

R. L. Manley	T. R. Kelley	E. Clayton
J. W. Spies	R. Lesley	E. L. Anderson
E. Kirtwright	E. R. Brown	O. L. Perry
W. J. Poe	A. Shipp	A. Harvey
C. Smith	J. E. Moore	E. Lawson
J. E. Jenkins	M. Milton	J. E. Harvey
C. Tyler	I. Clark	H. L. Croom
C. Walker, Jr.	A. A. Burns	R. Howard
T. L. Erwin	J. A. Ward	H. P. Grizone, III
O. Coney	J. C. Wallace	W. J. Birtley

In your letter of April 17, 1981, paragraph 2, it is stated in part that:

".....all positions at our Miller Street Freight House facility in St. Louis, Missouri, were abolished effective close of work Friday, July 18, 1980."

There were only four (4) positions, regularly assigned at the Miller Street Freight House facility which were abolished effective close of work Friday, July 18, 1980, and those positions and their occupants were:

<u>POSITION</u>	<u>OCCUPANT</u>
Control Foreman No. 248	R. L. Manley
General Warehouse Foreman No. 245	J. W. Spies
Checker Stowman No. 227	E. Kirtwright
Stowman No. 265	W. J. Poe

Note: Carrier under date of July 9, 1980, issued four (4) separate bulletins numbered A-2298, which abolished the only positions, regularly assigned to and working at Carrier's Miller Street Freight House facility; and no other positions, regular, extra or otherwise were abolished effective July 18, 1980.

All other employees, as of July 18, 1980, listed in the claim, were regular assigned to other positions on the St. Louis Terminal, in other offices and facilities; or, they were furloughed and subject to be called and worked subject to seniority, fitness and ability as set forth in Rule 14 of the Agreement as no Extra Board positions have been established to fill vacancies or to perform extra work at the many facilities and locations on the St. Louis Terminal Division.

For your information, attached hereto is a fact sheet for each of the thirty (30) employees involved in the instant claim; the facts, set forth in the attachments were compiled from bulletins, assignment notices, job abolishment notices, seniority rosters, displacement notices, copies of Carrier's letters, claim files, etc.

The fact sheets attached hereto clearly reflect the working status of each employee herein involved through February 1981; and since that time, (February 28, 1981) E. Kirtwright retired from service effective May 29, 1981.

In your letter of April 17, 1981, paragraph 5, it is stated that:

"Awards of Special Board of Adjustment No. 605 have consistently held that the Agreement of February 7, 1965, was not intended to provide protective benefits to employees when the work disappeared or no longer existed. Please see Awards Nos. 352, 373, 408, 409 and 415 of Board No. 605. In Award No. 352, BRAC vs. Western Warehousing Company, the Board stated:

'.....we are prepared to accept the interpretation which was presented in an analogous dispute by the Organization in the U. S. District Court for the Northern District of Oklahoma, supra.'

"For your information, this has reference to Civil Action No. 69-C-203 in the U. S. District Court for the Northern District of Oklahoma, involving benefits for employees represented by BRAC who were affected by the close of the Tulsa Union Depot Company because of the discontinuance of all passenger service. In that case, BRAC's position was that the Agreement of February 7, 1965, was not applicable. The awards of Special Board No. 605, cited above, adopted the same position expressed by BRAC in the Tulsa Union Depot Company case."

We do not agree, that Award Nos. 352, 373, 408, 409 and 415 of Special Board of Adjustment No. 605, supports Carrier's action in the instant case; furthermore, we do not agree, that the position of BRAC in the "Tulsa Union Depot Company case" supports Carrier's action in the instant case.

A careful study of the Awards referred to, which Carrier relies upon in the instant case, reveals entirely different facts and circumstances than those herein involved; and, in addition, the Tulsa Union Depot Company case involved entirely different facts and circumstances than those herein involved.

Therefore, we shall briefly discuss each case referred to, below, setting forth the facts and circumstances there involved; which, are quite different from those herein involved.

#### AWARD NO. 352

This Award, involved the Western Warehousing Company which operated two warehouses, one at Chicago, Illinois and the other at Harrisburg, Pennsylvania.

(a) Employees at Chicago held seniority rights and working rights at the Chicago Warehouse; and, could not utilize seniority rights to work at any other location or facility of the Western Warehousing Company.

(b) Employees at Harrisburg held seniority rights and working rights at the Harrisburg Warehouse; and, could not utilize seniority rights to work at any other location or facility of the Western Warehousing Company.



(c) Pursuant to Article I, Section 3 of the February 7, 1965 Agreement on November 11, 1965, a substitute Criteria (formula) was negotiated to apply only to the Harrisburg Warehouse.

(d) Pursuant to Article I, Section 3 of the February 7, 1965 Agreement, on September 1, 1966, a substitute Criteria (formula) was negotiated to apply only to the Chicago Warehouse.

(e) In the early part of the year 1971, the Chicago Warehouse was closed; and, all employees were furloughed, due to the fact that they were on a separate seniority roster applicable to the Chicago Warehouse only and therefore, could not exercise seniority rights to any position at another location or office facility.

#### NOTE

The facts and circumstances involved in Award No. 352, are not present in the instant case, as no substitute Criteria (formula) is involved and, all employees on the St. Louis Terminal Division, Seniority Roster No. 24 are subject to assignment or displacement rights in accordance with their seniority, fitness and ability, at numerous locations and/or office facilities on the St. Louis Terminal Division, this was so, before Carrier closed its Miller Street Warehouse and remains so at this time, and will remain so until the parties negotiate an Agreement to provide otherwise.

#### AWARD NO. 373

This Award involved a dispute taken to Special Board of Adjustment No. 605 by:

OTA D. THOMAS, ET AL, EMPLOYEES

VS

ILLINOIS CENTRAL RAILROAD: ILLINOIS CENTRAL HOSPITAL  
ASSOCIATION: BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

This Dispute involved the Illinois Central Hospital Association, New Orleans, Louisiana, which closed its hospital (ceased full operation) September 1, 1970, when the property upon which it was located was sold to the Louisiana State Dome Commission.

The persons involved in this case were employees of the Illinois Central Hospital Association and involved:

(a) 33 employees who were non-union and were not covered by any Agreement.

(b) 9 employees who were covered by an Agreement between BRAC and the Illinois Central Hospital Association.

The nine (9) employees covered by the BRAC Agreement were not covered by the February 7, 1965 National Agreement and were not subject to its terms.

However, they were covered by an Agreement dated January 11, 1967, providing for protective pay benefits, so long as the Hospital did not cease operation (closed).

While the dispute filed presented 11 questions (issues) to the Board for determination, the real issue involved was (quoted from the Award) that:

".....Claimants contend that they were actually employed by the Illinois Central Railroad and not by the Hospital Association. Therefore, as employees of the Railroad, they were entitled to the protective benefits of February 7, 1965 National Agreement."

Neutral Member of the Board, Murray M. Rohman, rightfully found that the Claimants were not subject to the provisions of the February 7, 1965 Agreement of which BRAC and Illinois Central Railroad were parties to.

Furthermore, a study of the Award reveals that when the Hospital involved closed and ceased operations, those employees under the BRAC Agreement simply had no positions left to which they could exercise seniority upon -- none existed following the closing of the Hospital.

#### NOTE

The facts and circumstances involved in Award No. 373, are not present in the instant case, as no special Protective Agreement is involved; the Missouri Pacific Railroad did not close down and cease operations; and, all employees on the St. Louis Terminal Division Seniority Roster No. 24 are subject to assignment or displacement rights in accordance with their seniority, fitness and ability at numerous locations and/or office facilities on the St. Louis Terminal Division, this was so, before Carrier closed its Miller Street Warehouse and remains so at this time and, will remain so until the parties negotiate an Agreement to provide otherwise.

#### AWARD NO. 408

This Award involved the Kansas City Terminal Railway Company; and, also involved a separate seniority district and roster for its employees working in its Mail and Baggage Department and none of the employees on that seniority roster could utilize their seniority and displace junior employees at other locations and/or office facilities at any time.

The KCT was a party to the February 7, 1965 Agreement: however, since it "did not have any net revenue ton miles or gross operating revenue" BRAC and KCT negotiated a substitute Criteria (formula) pursuant to the provisions of Article I, Section 3 of the February 7, 1965 Agreement.

The United States Postal Service effective July 1, 1975, terminated its mail handling contract with the KCT and effective June 30, 1975, the KCT abolished all positions in its Mail and Baggage Department and all employees in that Department (facility) became furloughed, as they could not utilize and exercise seniority rights in other departments, locations or office facilities of the KCT.

NOTE

The facts and circumstances involved in Award No. 408, are not present in the instant case, as there is no substitute Criteria (formula) involved and, all employees on the St. Louis Terminal Division Seniority Roster No. 24 are subject to assignment or displacement rights in accordance with their seniority, fitness and ability at numerous locations and/or office facilities on the St. Louis Terminal Division, this was so, before Carrier closed its Miller Street Warehouse, and remains so at this time and, will remain so until the parties negotiate an Agreement to provide otherwise.

AWARD NO. 409

This Award involved the Jacksonville Terminal Company; and, also involved a separate seniority district and roster, for its employees working at its Mail Shed and none of the employees on that seniority roster could utilize their seniority at other locations and/or office facilities at any time.

The JTC was a party to the February 7, 1965 Agreement. Effective October 18, 1975, the United States Postal Service elected to handle its own mail handling work and no longer had such work performed at Carrier's facility known as the Mail Shed; and, effective October 18, 1975, Carrier abolished all positions assigned at its Mail Shed and all employees at that facility became furloughed as they could not exercise seniority to any other positions on the JCT.

NOTE

The facts and circumstances involved in Award No. 409, are not present in the instant case; all employees on the St. Louis Terminal Division Seniority Roster No. 24, are subject to assignment or displacement rights in accordance with their seniority, fitness and ability, at numerous locations and/or office facilities on the St. Louis Terminal Division, this was so, before Carrier closed its Miller Street Warehouse, and remains so at this time and, will remain so until the parties negotiate an Agreement to provide otherwise.

AWARD NO. 415

This Award involved the Los Angeles Union Passenger Terminal, which came into being during the year 1939, in order to consolidate into one terminal (jointly owned) all passenger train service and all mail and baggage handling of the three (3) Carriers, set forth below:

- (a) Southern Pacific Transportation Co. (Pacific Lines)
- (b) Atchison, Topeka & Santa Fe Railway Co.
- (c) Union Pacific Railway Company

The LAUPT was a part to the February 7, 1965 Agreement; as no substitute Criteria (formula) was ever negotiated by the parties.

Carrier's Mail and Baggage Department employees were all on one seniority district and roster and could only work positions in Carrier's Mail and Baggage Department.

Effective May 1, 1975, the LAUPT no longer handled work in connection with passenger trains, such work, was taken over by Amtrak and performed by employees of Amtrak.

Effective March 13, 1976, all mail handling work was eliminated when the U. S. Postal Service elected to perform its own mail handling work and Carrier effective March 13, 1976, abolished all positions in its Mail and Baggage Department and all employees of that facility became furloughed, as they could not exercise seniority rights to any other offices or departments of the Terminal.

NOTE

The facts and circumstances involved in Award No. 415 are not present in the instant case; all employees, on the St. Louis Terminal Division Seniority Roster No. 24, are subject to assignment or displacement rights in accordance with their seniority, fitness and ability, at numerous locations and/or office facilities on the St. Louis Terminal Division, this was so, before Carrier closed its Miller Street Warehouse, and remains so at this time and, will remain so until the parties negotiate an Agreement to provide otherwise.

TULSA UNION DEPOT COMPANY

The Tulsa Union Depot Company ceased operations completely, pursuant to the grant of an abandonment application by the Interstate Commerce Commission under the provisions of Section 1(18) of the Interstate Commerce Act (49 U.S.C. Section 1(18)).

When the Tulsa Union Depot Company ceased operations, and closed down completely following the grant of abandonment by the Interstate Commerce Commission, to put it simply, the employees of that Company had no place to go; in other words, no place to exercise seniority rights as the Company no longer existed in any form or fashion.

Litigation, identified as Shambra, et al V. Brotherhood of Railway, and Airline Clerks, et al (Case No. 69-C-203 in the United States District Court for the Northern District of Oklahoma) began, and involved a suit by former employees of Tulsa Union Depot against the Tulsa Union Depot, its owning Carrier and BRAC, alleging a violation of the employees' rights under various agreements, including the Job Stabilization Agreement, when the Tulsa Union Depot ceased all operations completely pursuant to the grant of an abandonment application by the Interstate Commerce Commission under the provisions of Section 1 (18) of the Interstate Commerce Act (49 U.S.C. Section (18)).

Under the circumstances of abandonment and the complete cessation of all business by the Tulsa Union Depot Company, BRAC, agreed with the Carrier that under those specific circumstances, the Job Stabilization Agreement was not applicable to the employees involved.

#### NOTE

The facts and circumstances in the Tulsa Union Depot case, are not present in the instant case; the Missouri Pacific Railroad Company did not cease to exist; it did not cease all operations; and, all employees, on the St. Louis Terminal Division Seniority Roster No. 24, are subject to assignment or displacement rights in accordance with their seniority, fitness and ability, at numerous locations and/or office facilities on the St. Louis Terminal Division, this was so, before Carrier closed its Miller Street Warehouse, and remains so, at this time and, will remain so until the parties negotiate an Agreement to provide otherwise.

There is no dispute regarding the fact, that Carrier's Miller Street Warehouse was just one of the many facilities where employees holding seniority rights on the St. Louis Terminal Seniority Roster were allowed or permitted to work in line with established seniority rights, fitness and ability.

Carrier's Miller Street Warehouse, never was treated as a separate facility in applying the February 7, 1965 Agreement; as example, see Award No. 400 of Special Board of Adjustment No. 605, involving SRAC and the Missouri Pacific Railroad Company.

In addition, we do not agree with the last paragraph of your letter dated April 17, 1981; nor, do we agree that the two page attachment thereto is correct.

We desire to discuss the instant claim, in conference, in an effort to resolve the dispute.

Yours very truly,



General Chairman

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Attachments (Fact Sheets for each involved employee)

cc: Mrs. S. M. Brunsmann

The parties remained deadlocked in their foregoing positions through conferences on the property, following which the matter was appealed to us for disposition.

Carrier cites a line of decisions by this Disputes Committee which, it argues, justify its actions and require dismissal of the present claim on grounds of stare decisis. The seminal decision was not by SBA No. 605, but by a U.S. District Court which dismissed an action by dissident former employees brought against BRAC, Tulsa Union Depot, and the Frisco Railway for alleged violations of their rights under the WJPA and the February 6, 1965 National Agreement. Shambra, et al. v. BRAC, et al. (Case No. 69-C-203). In granting defendants' Motion for Summary Judgment, the Court in Shambra did not provide much rationale for its conclusion that the February 7, 1965 National Agreement "does not apply in a case like this where there is not a decline but a complete abandonment." Citing the Shambra court as authority, however, SBA No. 605 (Rohman) in Award No. 352 held that the parties did not contemplate a complete cessation when they negotiated the decline in busi-

formula of Section 3 of Article I. In Award No. 373 (Rohman), the Neutral Chairman made a quantum leap by gratuitously expanding his earlier holding with the thesis that: "Even assuming, hypothetically, that Claimants were entitled to the benefits of the February 7, 1965 Agreement, such benefits are not applicable where a facility is completely closed." In a subsequent series of decisions under the Chairmanship of Robert O'Brien, this Disputes Committee effectively backed off from the overly broad dicta of Award No. 373 with a more refined holding that where a facility is completely closed and the employees have no other location, facility or office to which they can exercise seniority rights, then Carrier no longer is required to accord them the protective benefits of the February 7, 1965 Agreement. See SBA No. 605 Award Nos. 408, 409 and 415. This more sophisticated analysis, whereby the continuing ability to exercise seniority to other positions of employment is seen as the quid pro quo for continuing status on the Protected List and receipt of protective benefits, was carried forward in Award No. 425 (Zumas). We do not in any way detract from the principles established by this Dispute Committee in those latter cases when we here hold that they do not govern the outcome of the present dispute.

The present case is distinguishable readily on its facts from those decided in Award Nos. 352, 373, 408, 409, 415 and 425. Unlike the earlier cases, here the Claimants do have a continuation of viable seniority rights to displace onto other jobs in Seniority District No. 24. The "complete closing" of the Miller Street Warehouse was not the "complete closing" of every facility or location at which these protected employees could provide continuing service to Carrier in return for their continued protective status. Their seniority rights clearly were not extinguished as a contractual matter

nor do we find persuasive Carrier's bare assertion that they all were, a practicable matter, "unemployable" at any other location in Seniority District No. 24 except Miller Street Warehouse. We need not determine in this case whether de facto as opposed to de jure seniority rights are determinative, because the facts indicated that these employees not only technically could but in many cases actually did displace onto positions elsewhere in Seniority District No. 24 and/or were used by Carrier under Rule 14 after Miller Street Warehouse was closed down.

Based upon all of the foregoing, we find that Question No. 1 must be answered in the affirmative. There is not sufficient evidence on the record to answer Question No. 2 properly with respect to each named Claimant. We are aware that some of them have retired, others have taken sick leave for varying periods of time, and the employment profiles are not up-to-date on this record. Accordingly, we remand to the parties Question No. 2 for joint development of further information and joint determination, if possible. We shall retain jurisdiction to resolve Question No. 2, however, should the parties be unable to do so on the property.

#### AWARD

Question No. 1 is answered in the affirmative.

Question No. 2 was remanded to the parties subject to continuing jurisdiction in this Committee should joint resolution on the property prove impossible.

*Dana E. Eischen* /sk  
Dana E. Eischen, Chairman

Date: May 21, 1984